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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,026	08/10/2006	Harald Buchegger	BUCHEGGER-1 PCT	4165
25889	7590	07/31/2009		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER SULLIVAN, MATTHEW J	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 07/31/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,026

Applicant(s)

BUCHHEGGER, HARALD

Examiner

MATTHEW SULLIVAN

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/9/09 has been entered.

Response to Arguments

Applicant's arguments filed 6/9/09 have been fully considered but they are not persuasive.

Applicant has amended independent Claim 1 to further limit the detailed structure of the bores and the use of the bores. However, Examiner does not believe the additional limitations adequately traverse the prior art of record. In the previously mailed Advisory Action (5/29/09) Examiner made it clear that the locking elements of Schuchard are capable of being inserted either radially or axially into a housing or bore. It is therefore considered obvious to extend the bores up to a face side of the housing of Montagner such that the locking elements of Schuchard could be inserted axially. This would allow the locking elements and/or springs to be replaced if they were rendered ineffective due to excessive wear or defective manufacturing. Furthermore, the

limitation "for receiving the two helical springs after the housing is attached to the temple" is considered an intended use recitation and is given little to no patentable weight as the prior art as described need only be capable of functioning as claimed. It is considered obvious that extending the bores to accommodate axial introduction of the locking elements would satisfy this intended use. The rejection is modified below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montagner, U.S. Patent 6,161,254 (12/19/00) in view of Schuchard, U.S. Patent 6,505,933 (1/14/03).

Montagner teaches a hinge part (7) held in a displaceable manner in a longitudinal direction of the temple in a housing (1) on the temple side, a fixture (3', 3") which projects from the hinge part in the direction of displacement, engages in an opening in the housing (1) and comprising a fixture rod (3) and a transversal bar at the end of the fixture rod (5, 5'), two helical springs provided laterally adjacent the fixture rod (6) and parallel thereto inserted into a housing bore (fig. 6, 1') and resting with their ends at the hinge side on an abutment associated with the housing (Col 4, Lines 43-48) and open toward the housing opening for the fixture rod. Montagner does not teach the

housing bores each receiving a locking element forming the abutment for the helical spring. Schuchard does teach a locking element (11) forming the abutment for a helical spring (10) with the helical spring and locking elements inserted axially into a recess (2). At the time of the invention it would have been obvious to one of ordinary skill in the art to provide Montagner with the features as taught by Schuchard by extending the bores of Montagner to receive the locking elements axially because a replaceable locking element would allow the abutment to be replaced (after manufacturing is complete) if the abutment were to wear out due to high cycling and a change in size or proportion (for the bores) is generally considered within the ordinary skill of one in the art barring any unforeseen result, *In re Rose*.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montagner and Schuchard as applied to claim 1 above, and further in view of Montalban, U.S. Patent 6,152,562 (11/28/00).

All the aspects of the instant invention are disclosed above but for the locking element being screwed into the housing bore. Montalban does teach a locking element (24) being screwed into a housing bore (Col 3, Lines 65-67). At the time of the invention it would have been obvious to one of ordinary skill in the art to provide Montagner and Schuchard with the features as taught by Montalban because a screw fastening for the locking element is well known in the art and would be easily to install and remove.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW SULLIVAN whose telephone number is (571)270-5218. The examiner can normally be reached on Mon-Thurs, 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor D. Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MATTHEW SULLIVAN/
Examiner, Art Unit 3677

/Victor Batson/
Supervisory Patent Examiner, Art Unit 3677